



Written by [Bob Adelman](#) on August 31, 2023

Supreme Court to Hear Arguments Declaring CFPB Funding Mechanism Unconstitutional

The Supreme Court has [agreed to review a case](#) against the Consumer Financial Protection Bureau (CFPB) over its blatantly and deliberately intentional unconstitutional funding mechanism. A ruling affirming a lower court's conclusion could pave the way for negating that agency's tyranny over the nation's credit and financial-services industry.

The CFPB is the illegitimate brainchild of Massachusetts' far-left Senator Elizabeth Warren (D), who saw an opportunity following the 2008 financial crisis to inflict government regulators on the country's financial system.



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It was designed from the start to avoid constitutional limitations. It is housed inside the Eccles Building in Washington, D.C., along with the Federal Reserve's Board of Governors.

It isn't funded by Congress, but by the Federal Reserve, and, although part of the executive branch, there is virtually no congressional or executive oversight of the agency.

It writes its own rules, determines who violates them, and then punishes the violators, sometimes with outrageous fines that threaten their victims' very survival.

There has long been an effort to bring the agency to heel, and the latest challenge, [Community Financial Services Association of America v. Consumer Financial Protection Bureau](#), is the one most likely to accomplish that task.

In essence, the association representing numerous financial-services businesses claims that the agency's unique funding mechanism violates the Constitution's appropriations clause. Indeed, it was designed that way to insulate it from any congressional oversight. Consequently, it also violates the separation of powers principle that makes the U.S. Constitution unique.

If the high court affirms the lower court's ruling, then everything that the rogue agency has done since it was created will be vulnerable to constitutional challenge.

[The decision](#) by the U.S. Fifth Circuit Court of Appeals last October is a virtual study in constitutional law. It opens with a quote from *The Federalist*, No. 10:

An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced ..., as that no one could transcend their legal limits, without being effectually checked and restrained by the others.



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The plaintiffs contend that the agency's unique funding mechanism illegally insulates the agency from congressional oversight or restraint:

Plaintiffs contend that the Payday Lending Rule [a rule regarding the ability of lenders to withdraw payments from borrowers' accounts] is invalid because the Bureau's funding structure violates the Appropriations Clause of the Constitution and the separation of powers principles enshrined in it.

The CFPB has enjoyed virtually unlimited power to write its own rules and then enforce them, thus violating the separation of powers principle. The court noted:

The Bureau "wields vast rulemaking, enforcement, and adjudicatory authority over a significant portion of the U.S. economy."

"The agency has the authority to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, and prosecute civil actions in federal court."

The Bureau "may seek restitution, disgorgement, and injunctive relief, as well as civil penalties of up to \$1,000,000 (inflation adjusted) for each day that a violation occurs."

Unlike nearly every other administrative agency, Congress placed this "staggering amalgam of legislative, judicial, and executive power in the hands of a single Director."

Remember that this monstrosity was created during the Obama administration, when Democrats — including far-left Sen. Warren — were in control. It was Warren's dream, now a reality, to insulate the agency from any outside constraints:

Most anomalous is the Bureau's self-actualizing, perpetual funding mechanism. While the great majority of executive agencies rely on annual appropriations for funding, the Bureau does not.

Instead, each year, the Bureau simply requisitions from the Federal Reserve an amount "determined by the Director to be reasonably necessary to carry out" the Bureau's functions....

So Congress did not merely cede *direct* control over the Bureau's budget by insulating it from annual or other time limited appropriations. It also ceded *indirect control* by providing that the Bureau's self-determined funding be drawn from a source that is itself outside the appropriations process—a double insulation from Congress's purse strings that is "unprecedented" across the government.... [Emphasis in original.]

So the Bureau's funding is double-insulated on the front end from Congress's appropriations power.

And Congress relinquished its jurisdiction to review agency funding on the back end.

In between, Congress gave the Director its purse containing an off-books charge card that rings up "[un]appropriated monies."

Wherever the line between a constitutionally and unconstitutionally funded agency may be,



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this unprecedented arrangement crosses it.

The Fifth Circuit reined in the agency in its ruling:

Congress's cession of its power of the purse to the Bureau violates the Appropriations Clause and the Constitution's underlying structural separation of powers.

The district court accordingly erred in granting summary judgment in favor of the Bureau and denying judgment in favor of the Plaintiffs.

We therefore REVERSE the judgment of the district court on that issue, RENDER judgment in favor of the Plaintiffs, and VACATE the Bureau's Payday Lending Rule.

Please note that in its ruling, the Fifth Circuit specifically declared the agency's Payday Lending Rule was unconstitutional. This leads one to conclude that, if the high court affirms this ruling against the rogue CFPB, it would also suggest that every other "rule" the agency has promulgated in its 13-year history would also be open to constitutional challenge.

The high court [will hear arguments in the fall](#), with its final decision to be rendered next spring.

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